IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARLENE CIMINO,	:	**CIVIL ACTION**
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
RELIANCE STANDARD LIFE INSURANCE COMPANY and PHN PACKAGING SYSTEMS, INC.,	:	
	:	
Defendants.	:	**NO. 00-2088**

Reed, S.J. **March 12, 2001**

M E M O R A N D U M

Now before the Court are the motion of defendants Reliance Standard Life Insurance Company ("Reliance Standard") and PHN Packaging Systems for summary judgment (Document No. 7) and the motion of plaintiff Marlene Cimino to compel answers to interrogatories (Document No. 10). Upon consideration of the motions, responses, and the memoranda and evidence submitted therewith, defendants' motion will be granted and plaintiff's motion will be denied.

Background

Plaintiff Marlene Cimino last worked for defendant PHN Packaging Systems, Inc. ("PHN"), on December 27, 1996. On that date, plaintiff claims she experienced a "nervous breakdown" and thereafter suffered from anxiety and depression that rendered her unable to perform in her job as an administrative assistant. On July 14, 1997, Cimino filed a claim for long-term benefits with defendant Reliance Standard Life Insurance Company ("Reliance Standard"), with which PHN had contracted to provide long-term disability insurance coverage

to its employees under PHN's group long-term disability plan ("plan").

On December 1, 1997, Reliance Standard issued a letter denying Cimino's claim for long-term disability benefits. (Letter from Doris Wade, Reliance Standard Examiner, Dec. 1, 1997, at RSL 0051.) Cimino sought an administrative review of the denial, and submitted additional documentation to support her claim. On April 27, 1998, Reliance Standard informed plaintiff that the original denial would be upheld, concluding that the evidence provided by Cimino "was not supportive of a medical condition so severe, it would preclude you from performing the material duties of your occupation ... ." (Letter from Rowena Saunders, Reliance Standard Manager, Apr. 27, 1998, at RSL 0031.)

Cimino then retained counsel who had her examined by a psychiatrist. Nearly one year after the denial of her appeal, plaintiff's counsel forwarded to Reliance Standard a report from the psychiatrist along with a demand for the payment of long-term benefits. (Letter from Michael T. Grimes, Counsel for Plaintiff, Mar. 9, 1999, at RSL 0024.) Reliance Standard concluded that the psychiatric report was insufficient to warrant a finding that Cimino was totally disabled and eligible for long-term benefits. (Letter from Rowena Saunders, Reliance Standard Manager, Mar. 16, 1999, at RSL 0021.)

Cimino then brought this suit under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132 (a) (1) (B), seeking past and future benefits due under the plan. This Court has jurisdiction over this case under 28 U.S.C. § 1331, as it presents a question arising under federal law.

Summary Judgment

In deciding a motion for summary judgment under Rule 56 of the Federal Rules of Civil

Procedure, "the test is whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." Medical Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (citing Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994)). "As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505 (1986). Furthermore, "summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. at 250.

On a motion for summary judgment, the facts should be reviewed in the light most favorable to the non-moving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348 (1986) (quoting United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S. Ct. 993 (1962)). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts," Matsushita, 475 U.S. at 586, and must produce more than a "mere scintilla" of evidence to demonstrate a genuine issue of material fact in order to avoid summary judgment. See Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

1. Standard of Review Under ERISA

First, I must decide what standard should be applied in reviewing the defendants' decision to deny plaintiff's claim for benefits. The Supreme Court has held that "a denial of benefits challenged under § 1132 (a) (1) (B) is to be reviewed under a *de novo* standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine

eligibility for benefits or to construe the terms of the plan." Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115, 109 S. Ct. 948 (1989). To determine whether the defendants were given discretionary authority to determine eligibility for benefits, a court must look to the language of the plan. See id. at 115 ("[T]he validity of a claim to benefits under an ERISA plan is likely to turn on the interpretation of terms in the plan at issue."). Where an administrator or fiduciary has been given discretion, its decisions are reviewed under an "abuse of discretion" or "arbitrary and capricious" standard,[1] and they "will not be disturbed if reasonable." Mitchell v. Eastman Kodak Co., 113 F.3d 433, 437 (3d Cir. 1997) (quoting Firestone, 489 U.S. at 111).

The Court of Appeals for the Third Circuit has introduced a wrinkle into the standard of review in ERISA cases. In Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377 (3d Cir. 2000), the court of appeals adopted a "sliding scale" approach to ERISA claims involving an employer who pays an insurance company to fund, interpret, and administer a plan. This unique approach is required because there is an inherent conflict of interest involved in an insurance company both funding and administering a plan; the company has an incentive to deny claims because it is paying claims out of its own coffers. See id. at 388-89. Under the sliding scale or "heightened arbitrary and capricious" analysis established by Pinto, the district court must examine each case on its facts, taking into account "the sophistication of the parties, the information accessible to the parties, and the exact financial arrangement between the insurer and the company." Id. at 392.

In this case, the plan language clearly delegates discretionary authority to Reliance Standard. On the "Claims Provisions" page of the plan, under the heading of "Payment of

[1] "The 'arbitrary and capricious' standard is essentially the same as an 'abuse of discretion' standard ... ." Mitchell v. Eastman Kodak Co., 910 F. Supp. 1044, 1047 (M.D. Pa. 1995), aff'd, 113 F.3d 433 (3d Cir. 1997).

Claims," the plan provides:

> Reliance Standard Life Insurance Company shall serve as the claims review fiduciary with respect to the insurance policy and the Plan. The claims review fiduciary has the discretionary authority to interpret the Plan and the insurance policy and to determine eligibility for benefits. Decisions by the claims review fiduciary shall be complete, final and binding on all parties.

(PHN Packaging Systems Group Long-Term Disability Insurance Policy, Reliance Standard Life Insurance Company, Policy No. LSC 099250, at RSL 0000.)[2] The terms of the plan are precisely those used by the Supreme Court in Firestone; the plan places "discretionary authority to interpret" the plan and to "determine eligibility" squarely in the hands of Reliance Standard. Thus, an arbitrary and capricious standard will be applied

Pinto alters the inquiry in this case, because the plan is both administered and funded by the defendant Reliance Standard. (PHN Packaging Systems Group Long-Term Disability Insurance Policy, Reliance Standard Life Insurance Company, Policy No. LSC 099250, at RSL 0000.)[3] However, it is not immediately clear what Pinto requires. The odd aspect of the holding in Pinto is that the court of appeals did not apply the conflict of interest analysis that it held was

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[2] This language makes me doubt that PHN is a proper defendant in this case. Only a plan and its fiduciaries may be sued for a denial of benefits under 29 U.S.C. § 1132 (a) (1) (b). An employer can be sued under ERISA only if the employer is also a fiduciary, as defined by ERISA. See Curcio v. John Hancock Mut. Life Ins. Co., 33 F.3d 226, 233 (3d Cir. 1994); 29 U.S.C. § 1002 (21) (A). In deciding whether an employer is a fiduciary, a court must determine from the plan literature whether the employer "maintained any authority or control over the management of the plan's assets, management of the plan in general, or maintained any responsibility over the administration of the plan." Curcio, 33 F.3d at 233.

The plan literature in this case indicates that Reliance Standard shouldered the entire burden of administering the plan, and that PHN had little or no control, authority, or role in the plan. Under the terms of the plan, all claims are submitted to Reliance Standard, and Reliance Standard reviews all claims, interprets the plan, makes final decisions regarding eligibility for benefits, and pays out benefits. (PHN Packaging Systems Group Long-Term Disability Insurance Policy, Reliance Standard Life Insurance Company, Policy No. LSC 099250, "Claims Provisions," at RSL 0009.) There is no discussion in the plan of PHN having responsibility over the plan or its assets. Thus, it appears that PHN is not a proper defendant in this case. And even if PHN were a proper defendant, my decision on the merits today disposes of any possible claim against PHN under ERISA.

[3] The plan establishes Reliance Standard as the "claims review fiduciary," and requires Reliance Standard to "pay any benefits due." (PHN Packaging Systems Group Long-Term Disability Insurance Policy, Reliance Standard Life Insurance Company, Policy No. LSC 099250, "Payment of Claims," at RSL 0009.)

crucial to determining the standard of review. In the case before it, the court of appeals did not examine "the sophistication of the parties, the information accessible to the parties, and the exact financial arrangement between the insurer and the company." Pinto, 214 F.3d at 392.[4] After calling for a searching inquiry into these matters, the court simply held, without explanation, that it was applying a "heightened arbitrary and capricious review." Pinto, 214 F.3d at 393. One could conclude from the decision of the court of appeals that the conflict of interest analysis is superfluous, and that courts faced with an ERISA defendant that both funds and administers a plan should automatically apply a heightened arbitrary and capricious review.

I believe the safest route is to track closely the analysis of the court of appeals in Pinto and automatically apply a heightened arbitrary and capricious standard. The factual matrix in Pinto is quite similar to that of this case; both cases involve the same defendant, the same kind of long-term disability plan, and identical definition of total disability, and this case involves an even more clearly worded delegation of discretion than in Pinto. Accordingly, I will stick to the path trod by the court of appeals in Pinto by applying a heightened arbitrary and capricious standard of review here. Such a review is "deferential, but not absolutely deferential." Id. at 393. The defining feature of such a review, according to court of appeals in Pinto, is that this Court "look[s] not only at the result – whether it is supported by reason – but at the process by which the result was achieved." Id. at 393.

2. The Result

I turn first, then, to the reasons offered by Reliance Standard to justify its decision based

[4] There is no evidence here of the financial arrangement between the insurer and the employer. However, this Court can fairly resolve the legal issue before it without evidence of the financial arrangement. In another case such information might be necessary and critical to apply the apparent dictates of Pinto.

on evidentiary record in this case.[5] In its three letters to Cimino and her counsel, Reliance Standard set forth its reasons clearly. The letters reflect that Reliance Standard measured Cimino's evidence against the definition of "Total Disability" contained in the plan, which provides:

> "Totally Disabled" and "Total Disability" mean that, as a result of an Injury or Sickness:
>
> (1) during the Elimination period and for the first 24 months for which a Monthly Benefit is payable, an Insured cannot perform the substantial and material duties of his/her regular occupation;
>
> (a) "Partially Disabled" and "Partial Disability" mean that as a result of an Injury or Sickness an Insured is capable of performing the material duties of his/her regular occupation on a part-time basis or some of the material duties on a full-time basis. An Insured who is Partially Disabled will be considered Totally Disabled, except during the Elimination Period;
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> (b) "Residual Disability" means being Partially Disabled during the Elimination Period. Residual Disability will be considered Total Disability; and
>
> (2) after a Monthly Benefit has been paid for 24 months, an Insured cannot perform the substantial and material duties of any occupation. Any occupation is one that the Insured's education, training or experience will reasonably allow. We consider the Insured Totally Disabled if due to an Injury or Sickness he or she is capable of only performing the material duties on a part-time basis or part of the material duties on a Full-time basis.

((PHN Packaging Systems Group Long-Term Disability Insurance Policy, Reliance Standard Life Insurance Company, Policy No. LSC 099250, "Definitions," at RSL 0007.) Reliance Standard also noted,

> Our determination regarding whether you meet your group policy's definition of disability is, and must be, based on the objective medical documentation in your claim file. We have no basis on which to measure subjective complaints or medical opinions that are not substantiated by objective medical findings.

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[5] "Under the arbitrary and capricious standard of review, the 'whole' record consists of that evidence that was before the administrator when he made the decision being reviewed." Mitchell, 113 F.3d at 440. In the instant case, that evidence consists of the physicians' records submitted to Reliance Standard, letters from plaintiff, and completed claim forms.

(Letter from Doris Wade, Reliance Standard Examiner, Dec. 1, 1997, at RSL 0052.)

Reliance Standard reviewed Cimino's claim three times under these standards, and each time concluded that the medical documentation did not support a finding of total disability. Reliance Standard acknowledged that plaintiff suffered from situational stress and depression with symptoms including shaking, uncontrollable sobbing, incoherent speech, and sleeplessness. (Id.; Office Notes of Dr. Davis, Dec. 27. 1996, at RSL 0063.) However, Reliance Standard pointed to substantial evidence in the medical record that tended to show that these symptoms did not render Cimino totally disabled. That evidence included the following:

1. Within weeks of her "nervous breakdown" at work on December 27, 1996, medical documentation showed, plaintiff had improved and had responded well to medications. (Letter from Doris Wade, Reliance Standard Examiner, Dec. 1, 1997, at RSL 0052; Office Notes of Dr. Davis, Jan. 3, 1997, Jan. 22, 1997, at RSL 0062.)[6]

2. As of January 31, 1997, plaintiff's physician, Dr. Davis, observed that Cimino was no longer grossly depressed. (Letter from Doris Wade, Reliance Standard Examiner, Dec. 1, 1997, at RSL 0052; Office Notes of Dr. Davis, Jan. 31, 1997, at RSL 0061.)[7]

3. Notes from an office visit to Dr. Davis on February 25, 1997, reflected that plaintiff was "Improved but still quite anxious." (Office Notes of Dr. Davis, Feb. 25, 1997, at RSL 0060.)

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[6] Notes from an office visit to Dr. Davis on January 3, 1997, noted that plaintiff "feels much better." (Office Notes of Dr. Davis, Jan. 3, 1997, at RSL 0062.) Notes from a telephone consultation reflect that "Patient reports feeling much better but still only fair appetite and still very nervous at times." (Office Notes of Dr. Davis, Jan 22, 1997, at RSL 0062.)

[7] Notes from that office visit reported,"Anxiety a little less, but still experiencing some tremors. Not grossly depressed now. Occasional loss of concentration, however." (Office Notes of Dr. Davis, Jan. 31, 1997, at RSL 0061.)

4. Cimino did not see a doctor for two months after her February 25, 1997 visit.

5. A May 2, 1997, checkup revealed that petitioner was off some of her medication and was feeling "pretty good." (Letter from Rowena Saunders, Reliance Standard Manager, Apr. 27, 1998, at RSL 0031; Office Notes of Dr. Davis, May 2, 1997, at RSL 0059.)

6. Four months later, petitioner returned to Dr. Davis, who observed that she "seems to be feeling a little better, but still having palpitations." (Letter from Rowena Saunders, Reliance Standard Manager, Apr. 27, 1998, at RSL 0031; Office Notes of Dr. Davis, Sept. 15, 1997, at RSL 0058.)

7. Cimino produced a letter from her cardiologist, Dr. Thomas McGarry to Dr. Davis and a form, but no medical records from her visits to Dr. McGarry. (Letter from Dr. Thomas McGarry, Jan. 14, 1998, at RSL 0039; Physician's Claim Form from Dr. McGarry, at RSL 0115.) The claim form stated that her first visit to Dr. McGarry was in February 1997, approximately two months after the alleged onset of her disability. The letter related to an examination that took place on January 12, 1998, more than one year after the onset of her alleged disability. The letter also stated that Cimino's mood was, at the time, "significantly better than it has been." (Letter from Dr. Thomas McGarry, Jan. 14, 1998, at RSL 0039.)

8. According to Cimino, both Dr. Davis and Dr. McGarry encouraged her to see a psychiatrist. Cimino was resistant to do so because, "I was afraid that if I saw a psychiatrist, either my present employer or any subsequent employer, would not look favorably on me." (Letter from Marlene Cimino, Feb. 12, 1998, at RSL 0036.)

9. More than one year after her last day of work for PHN, on January 23, 1998, Ms. Cimino

saw a psychiatrist, Dr. Martin Durkin. (Id.) She apparently had only one visit with Dr. Durkin, and produced no medical records from that visit. (Id.)

10. Plaintiff produced no contemporaneous psychiatric evidence until December 4, 1998, when she was examined by a psychiatrist, Dr. James Nelson, upon the recommendation of counsel. Reliance Standard reviewed the report of Dr. Nelson and observed, "It is our opinion that Dr. Nelson cannot reasonably predict that Ms. Cimino has been disabled for the past two years when he never saw or treated her prior to December 4. 1998." (Letter from Rowena Saunders, Reliance Standard Manager, Mar. 16, 1999, at RSL 0021.)

11. In addition, there were, according to Reliance Standard, several inconsistencies in the report of Dr. Nelson, and the report failed to identify the tests performed by Dr. Nelson or the results of those tests. (Id. at RSL 0022.)

On the basis of this evidence, Reliance Standard denied Cimino's claim, informing her, "[Y]ou do not meet your group policy's definition of Total Disability and your claim must be denied." (Letter from Doris Wade, Reliance Standard Examiner, Dec. 1, 1997, at RSL 0052; Letter from Rowena Saunders, Reliance Standard Manager, Apr. 27, 1998, at RSL 0031.)

Having reviewed the evidentiary record and the reasons proferred by Reliance Standard, I conclude that a reasonable fact-finder could not find that the decision of Reliance Standard to deny Cimino's claim for long-term disability benefits was unreasonable. Reliance Standard reasonably required her to produce objective medical documentation of her disability, which she claimed was related to a nervous breakdown she experienced on December 27, 1996, and which manifested itself in symptoms of shaking, sobbing sleeplessness, and incoherent speech. The documentation produced by Cimino's physician showed that she improved during the month

following her "breakdown." She went for long spells without seeing any physician during 1997 Despite the fact that her claimed disability clearly related to an area typically treated by psychiatrists, and despite the urging of her physicians that she see a psychiatrist, Cimino refused to see a psychiatrist until more than one year after she last worked. Thus, Reliance Standard had no contemporaneous psychiatric records on which to evaluate her claims of chronic depression and anxiety beginning in 1996. These are rational grounds on which to deny a claim for total disability. Reliance Standard also reasonably found that the psychiatric evaluation produced by Cimino more than one year after the conclusion of her appeal based on an examination that took place nearly two years after the alleged onset of her total disability was not sufficient. While Cimino clearly suffered from some level of anxiety, it was incumbent upon her to produce evidence that this anxiety rendered her totally disabled. Reliance Standard reasonably concluded that she never produced such evidence.

Plaintiff argues that Reliance Standard failed to sufficiently explain or justify its conclusion that the medical evidence was insufficient. However, the burden is not on Reliance Standard at this stage; the burden is on plaintiff to produce evdience such that a reasonable jury could find that Reliance Standard did not have a reasonable basis for its finding that Cimino had not proved she was totally disabled. Plaintiff highlights medical records showing that she continued to suffer tremors and palpitations. However, I conclude that Reliance Standard could reasonably have found that such symptoms were not enough to render her totally disabled.

ERISA and binding case law restrict the inquiry this Court may conduct in reviewing Reliance Standard's rejection of Cimino's claim for benefits. The question before me is not whether there was *any* evidence at all to support Cimino's claim, nor is the question whether I

would have made the same decision as Reliance Standard on this record. Rather, the question is whether a reasonable fact finder could conclude that the decision of Reliance Standard to deny Cimino's claim for long-term disability benefits was without reason, unsupported by the evidence, erroneous as a matter of law, irrational, arbitrary, or capricious.

I have reviewed the evidentiary record, including the evidence to which plaintiff points, and conclude that there is nothing in the record compelling enough to allow a reasonable jury to find that the determination of Reliance Standard was "without reason, unsupported by the evidence or erroneous as a matter of law." Mitchell v. Eastman Kodak Co., 113 F.3d 433, 439 (3d Cir. 1997) (quoting Abnathya v. Hoffman-LaRoche, Inc., 2 F.3d 40, 45 (3d Cir. 1993)). Accordingly, I conclude that there is no genuine issue of material fact as to whether Reliance Standard was unreasonable in its conclusion that the evidence produced by Cimino was insufficient to support a finding of total disability under the plan.

3. The Process

Under the heightened arbitrary and capricious standard set forth in Pinto, I must examine not only the result of the benefits determination, but the process by which it was reached. In Pinto, the court of appeals concluded that a number of procedural anomalies rendered the decision improper under the heightened arbitrary and capricious standard of review. First, in that case, Reliance Standard reversed its own initial determination that the plaintiff was totally disabled without receiving any additional medical information. See Pinto, 214 F.3d at 393. Second, in a "self-serving" manner, Reliance Standard relied heavily on a parts of a particular doctor's report while rejecting the doctor's conclusion that the plaintiff was disabled. See id. Third, the evidentiary record revealed that Reliance Standard rejected its own employee's

recommendation that benefits be paid to Pinto pending further testing, and instead suspended her benefits. See id. at 394.

This case involves none of the procedural problems that plagued the record in Pinto. Reliance Standard denied Cimino's claim from the outset, and stuck to that denial. There was no self-serving reliance on parts of any doctor's records in this case; Reliance Standard recognized that Cimino had some valid medical problems and provided her ample opportunity to produce evidence supporting her claim that she was totally disabled. Finally, there are no "smoking guns" in the evidentiary record here as there were in Pinto; there is no indication of ambivalence within Reliance Standard concerning petitioner's eligibility for benefits. My review of the record revealed no other procedural anomalies that would warrant the reversal of Reliance Standard's decision to deny Cimino benefits. If anything, Reliance Standard exhibited a willingness to bend the procedures in Cimino's favor; Reliance Standard reviewed Cimino's tardy submission of Dr. Nelson's psychiatric examination despite having already afforded her the one appeal to which she was entitled under the plan.

Accordingly, I conclude that there is no genuine issue of material fact as to any procedural aspects of the process through which Reliance Standard arrived at its decision to deny Cimino's application for long-term benefits.

3. Conclusion

I have concluded that a reasonable jury could not find on this record that there was no reasonable basis for the decision of Reliance Standard to deny plaintiff total disability benefits or that the process by which Reliance Standard made its determination was flawed or unfair. Therefore, the motion for summary judgment will be granted.

Motion to Compel

Cimino attempts to stave off summary judgment with a cross-motion to compel answers to interrogatories. According to Cimino, the answers to interrogatories will illuminate the question of whether there was an effective delegation of discretionary authority from PHN to Reliance Standard.

The timing of this motion is troubling to me. Discovery ended in this case on November 14, 2000. Magistrate Judge M. Faith Angell, who managed the discovery process in this case, issued an order requiring the parties to work together to complete discovery and announcing that "[o]bjections to outstanding responses for interrogatories should be submitted within this time frame." (Order, Document No. 6, date Nov. 1, 2000.) Plaintiff thus had until November 14 to raise the issue of inadequate responses to interrogatories with Judge Angell. If plaintiff was dissatisfied with those answers, plaintiff could have turned to Judge Angell, per the instructions in her order.[8] Instead, plaintiff bided her time, allowed discovery to close, and raised the issue only when presented with a motion for summary judgment. My experience has been that when parties don't get what they want in discovery, they seldom let a day pass – let alone two months, as in this case – without seeking judicial recourse. The tardiness of plaintiff's motion to compel, along with the intertwining of the motion to compel answers to interrogatories with the plaintiff's response to summary judgment, suggests that plaintiff should be aware that the resolution of the motion in her favor would not lead to the discovery of admissible evidence, but only delay this

[8] Defendants presented plaintiff with objections to interrogatories on November 13, 2000. Plaintiff did not have much time to comply with the November 14 deadline, but the issue was a straightforward one, and plaintiff could have informed Judge Angell of their concerns in time to meet the November 14 deadline, or could have sought recourse soon after the deadline had passed. Judge Angell retained jurisdiction over the case for discovery purposes until December 14, 2000, and thus plaintiff had ample opportunity to raise this issue during the normal course of discovery.

Court's consideration of the motion for summary judgment. That alone is reason enough to reject plaintiff's motion.

There is an even more compelling reason to deny plaintiff's motion: the discovery Cimino seeks cannot help her cause on summary judgment. As discussed above, the plan language clearly and unmistakably delegates discretionary authority over the determination of eligibility for benefits to Reliance Standard. This language tracks that of the seminal Supreme Court case concerning the delegation of discretionary authority in ERISA cases. The Court of Appeals for the Third Circuit has held less explicit language to be sufficient to delegate discretionary authority. See Pinto, 214 F.3d at 379; Pinto v. Reliance Standard Life Ins. Co., 156 F.3d 1225 (3d Cir. 1998) (unpublished opinion) (holding that policy language requiring submission of "satisfactory proof" of disability constituted sufficient delegation of discretionary authority). Cimino seeks discovery of parole evidence that she claims would answer the question of whether there was an effective delegation of discretionary authority from PHN to Reliance Standard. I conclude that that question has already been answered by the unequivocal language of the plan, and that additional evidence would not serve to bolster plaintiff's case.[9]

Accordingly, the motion to compel will be denied.

An appropriate Order follows.

[9] Specifically, Cimino contends that the policy language raises a question as to the intent of PHN in delegating discretionary authority to Reliance Standard. If PHN took issue with the terms of the plan, one would expect PHN, which is a party to this lawsuit, to express such disagreement. PHN has raised no such objection.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARLENE CIMINO,	:	**CIVIL ACTION**
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
RELIANCE STANDARD LIFE INSURANCE COMPANY and PHN PACKAGING SYSTEMS, INC.,	:	
	:	
Defendants.	:	**NO. 00-2088**

O R D E R

AND NOW, this 12th day of March, 2001, motion of defendants Reliance Standard Life Insurance Company ("Reliance Standard") and PHN Packaging Systems for summary judgment (Document No. 7) and the motion of plaintiff Marlene Cimino to compel answers to interrogatories (Document No. 10), the memoranda and evidence submitted therewith, as well as the entire record, and for the reasons set forth in the foregoing memorandum, and having concluded, pursuant to Rule 56 of the Federal Rules of Civil Procedure, that there is no genuine issue of material fact and that defendants are entitled to judgment as a matter of law, and having concluded the motion to compel is tardy and that the evidence plaintiff seeks to compel would not, as a matter of law, have any effect on the outcome of this case, **IT IS HEREBY ORDERED** that motion of defendants for summary judgment is **GRANTED** and the motion of plaintiff to compel answers to interrogatories is **DENIED.**

It is **FURTHER ORDERED** that **JUDGMENT IS HEREBY ENTERED** in favor of defendants, Reliance Standard Life Insurance Company and PHN Packaging Systems, Inc., and against plaintiff Marlene Cimino.

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LOWELL A. REED, JR., S.J.